(B)

CF 1062

IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. No. 3185 /2003

Petitioner : PAWAN MANTRI,
S/o O. P. Mantri,
aged about 32 years,
Partner, S. S. Udyog,
17/W, Heavy Industrial Area,
Hathkhoj, Bhilai,
Distt. Durg (C.G.)
Through Its partner Pawan Mantri,
S/o Shri Om Prakash Mantri,
R/o Street No. 3, Sundar Nagar,
Bhilai, Distt. Durg (C.G.)

P. R. No. 2463/03
Presented by Shri Sudhir Jain
dated 22.08.03

VERSUS

Respondent : 1. State of Chhattisgarh,
through : Principal Secretary,
Commerce & Industries,
Mantralaya, D.K.S. Bhawan
Raipur (C.G.)

2. Director of Industries,
District Industrial Centre,
Durg, Distt. Durg (C.G.)

3. General Manager,,
District Industrial Centre,
Durg, Distt. Durg (C.G.)

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22/8/03
CLERK TO A.G. BILASPUR

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

The petitioner respectfully submits as under :-

AFR

HIGH COURT OF JUDICATURE CHHATTIGARH: BILASPUR
(Division Bench)

CORAM: HON'BLE SHRI A.K. PATNAIK, CJ
& HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO.2120 OF 1989

WRIT PETITION NO.2403 OF 1989

WRIT PETITION NO.3053 OF 1992

WRIT PETITION NO.2406 OF 2001

WRIT PETITION NO. 742 OF 2002

WRIT PETITION NO. 894 OF 2002

AND

WRIT PETITION NO.3185 OF 2003

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

Hon'ble Mr. Justice V.K. Shrivastava

I agree

Sd/-
V.K.Shrivastava
Judge

POST FOR ORDERS: 14/07/2005

Sd/-
Chief Justice

AFR

HIGH COURT OF JUDICATURE CHHATTIGARH: BILASPUR
(Division Bench)

CORAM: HON'BLE SHRI A.K. PATNAIK, CJ
& HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO.2120 OF 1989

M/s. Utkal Hydorcarbons, Bhilai

Versus

State of Chhattisgarh & Others

WRIT PETITION NO.2403 OF 1989

M/s. Raysinet Kemikal Company & Others

Versus

State of Chhattisgarh & Others

WRIT PETITION NO.3063 OF 1992

M/s. Deepa Industries

Versus

State of Chhattisgarh & Others

WRIT PETITION NO.2406 OF 2001

Indian Petro Coal Products & Others

Versus

State of Chhattisgarh & Others

WRIT PETITION NO. 742 OF 2002

M/s. S.S. Udyog

Versus

Steel Authority of India Limited & Others

WRIT PETITION NO. 894 OF 2002

Yash Chopda

Versus

Steel Authority of India Limited & Others

AND

WRIT PETITION NO.3186 OF 2003

Pawan Mantri

Versus

State of Chhattisgarh & Others

Present : Mr. Rohit Arya, Sr. Adv., assisted by Mr. R.R. Sinha learned counsel for the petitioner in W.P. No.2120 of 1989.

Mr. Rajeev Shrivastava learned counsel for the petitioner in W.P. No.2403 of 1989.

Mrs. Meena Shastri learned counsel for the petitioner in W.P. No.3053 of 1992.

Mr. Manindra Shrivastava, Sr. Adv., assisted by Mr. Amit Verma learned counsel for the petitioners in W.P. No.2406 of 2001.

Mr. Kishore Bhaduri learned counsel for the petitioners in W.P. No.742 of 2002 & W.P. No.3185 of 2003.

Mr. Satyawan Agrawal learned counsel for the petitioner in W.P. No.894 of 2002.

Mr. S.C. Verma learned counsel for the intervener / Kusum Kemikals (P) Ltd.

Mr. V.V.S. Murthy, Dy. Advocate General, assisted by Mr. Somesh Bajaj, learned Dy. Govt. Adv., for the State of Chhattisgarh.

Mr. Prashant Mishra, Sr. Adv., assisted by Mr. B.D. Guru learned counsel for the Bhilai Steel Plant.

Mr. P. Diwakar, Sr. Adv., assisted by Mr. Sanjay K. Agrawal, learned counsel for M/s. Ajay Chemicals and Indian Petro Coal Products and Steel Authority of India Ltd..

O R D E R

(Passed on 14th July of 2006)

The following order of the Court was passed by **A.K. Patnaik, CJ**: -

This batch of writ petitions relates to allotment of bye products of Bhilai Steel Plant as raw materials to different Industries located in the State of Chhattisgarh and were heard analogously and are being disposed of by this common judgment and order.

(2) The facts briefly are that M/s. Raysinet Kemical Co. and others filed a writ petition Misc. Petition No.462 of 1981 in the High Court of Madhya Pradesh at Jabalpur before the State of Chhattisgarh was constituted by the Madhya Pradesh Reorganisation Act, 2000 complaining

of arbitrary distribution of by products of the Bhilai Steel Plant as raw materials to different industries and by judgment and order dated 11/10/1984 the said batch of writ petitions were disposed of by the Madhya Pradesh High Court with the direction that the Director of Industries, Madhya Pradesh, in the light of the discussion in the order, will evolve a reasonable formula and allot the raw materials available in the light of the formula to the 13 Industrial Units.

(3) Pursuant to the said directions of the Madhya Pradesh High Court in the judgment and order dated 11/10/1984 passed in Misc. Petition No.462 of 1981, the Industries Commissioner, Government of Madhya Pradesh, by order dated 30/11/1984 constituted a Four-Members Committee (*hereinafter referred to as the "First Committee"*) headed by Additional Director of Industries, Durg and after considering the factors mentioned in the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court and after discussing with the representatives of the different Industrial Units recommended in para 5.7 of the report that the following minimum quantities be distributed to the thirteen industrial Units:

(a) Raysinet Kemikal	-	20 M.T.
(b) Utkal Hydrocarbons	-	12.5 M.T.
(c) 11 other Industrial Units	-	10 M.T.

The First Committee further recommended that the balance of the material after distribution of the minimum quantities will be distributed on prorata basis as per the assessed capacities of the Units as on 31/08/1982 as specified in para 5.4.1 of the report. In accordance with the aforesaid formula as evolved by the First Committee, the bye products of the Bhilai Steel Plant were distributed as raw materials to the Industries by order dated 31/01/1986 with effect from February, 1986.

(4) Thereafter by an order dated 12/08/1988 the Industries Commissioner, Government of Madhya Pradesh constituted a four members Committee (*hereinafter referred to as "the Second Committee"*) to decide the case of M/s. Deepa Industries for allotment of the chemical bye products and on the basis of the report of the Second Committee the Industries Commissioner issued the order dated 19-07-1988 allotting to M/s Deepa Industries a minimum quantity of 6 M.T per month and a prorata

allotment on the basis or its assessed maximum capacity of 8.5 M.T. out of the balance of the materials after the minimum quantities were distributed.

(5) Thereafter, the Chhattisgarh Chemical Industries Association moved the authorities to redistribute the raw materials on the ground that the production and availability of the bye products of the Bhilai Steel Plant has increased and by order dated 12/08/1988 the Industries Commissioner, Government of Madhya Pradesh, constituted yet another four members Committee (*hereinafter referred to as "the Third Committee"*) headed by the Industrial Advisor (Chem), Directorate of Industries, Bhopal to assess the capacities of chemicals unit set up at Bhilai and Raipur based on chemical bye products of Bhilai Steel Plant and to suggest norms of distribution of chemical bye products, keeping in view the recommendations of the first Committee and the Committee submitted its report and on the basis of the said report of the Third Committee, the Industries Commissioner, Government of Madhya Pradesh issued an order dated 23/02/1989 redistributing the bye products of the Bhilai Steel Plant as follows:

(A) M/s Resinet Chemicals - 75 M.T. per month.
(B) M/s Utkal Hydrocarbons - 46 M.T. per month.
(C) Other eleven units - 34 M.T. per month.

Allotment to M/s Deepa Industries was to remain as made by the order dated 19/07/1988.

(6) At the hearing, Mrs. Meena Shastri learned counsel for the petitioner in Misc. Petition 3053 of 1992 submitted that M/s Deepa Industries had moved Madhya Pradesh High Court in Misc. Petition No.2403 of 1989 and by order dated 20/02/1990 a Division Bench of the Madhya Pradesh High Court while rejecting the application for stay directed that the petitioner shall have continued supply in accordance with the report of the Expert Committee in Annexure-R/VIII. She pointed out that by a communication dated 10/03/1992 by the Directorate of Industries, Madhya Pradesh to the petitioner in Annexure-P/30 annexed to the writ petition the petitioner has also been informed that as per order dated 20/02/1990 of the Madhya Pradesh High Court passed in Misc. Petition No.2403 of 1989 the distribution of raw material had been adjusted accordingly. But M/s. Deepa Industries have not been given raw materials as per the requirements of the industrial Unit. She submitted that originally the requirement of the Industrial

Unit of M/s. Deepa Industries was 116 M.T. of raw material per annum, but subsequently the capacity was increased and the requirement of the Unit is now 220 M.T. per annum. She submitted that the Development Commissioner, Small Scale Industries, Ministry of Industries in his letter dated 13/08/1990 to the Industries Commissioner, Government of Madhya Pradesh has recommended for higher allotment of raw material as per requirement of the Industrial Unit as per revised capacity of 220 M.T. per annum. She submitted that taking the revised capacity of 220 M.T. per annum, the requirement of M/s. Deepa Industries works out to 18 M.T. per month but the petitioner is being allotted only 6 M.T. per month. She cited the decision of the Supreme Court in **Om Prakash and others Vs. State of J&K and others** reported in **AIR 1981 SC 1001** in support of her contention that the distribution of raw material for Industries must satisfy the equality clause of Article 14 of the Constitution of India.

(7) Mr. Rajiv Shrivastava, learned counsel appearing for the petitioners in Writ Petition 2403 of 1989 M/s. Raysinet Kemikal Company and others submitted that while industrial Unit of the petitioners is a medium industry, the other industrial Units are all small scale Units. He further submitted that it would be clear from the report of the First Committee that the annual installed capacity of M/s. Raysinet Kemikal Company is the highest and it is for this reason that the First Committee recommended that M/s. Raysinet Kemikal Company will be allotted a minimum quantity of 20 M.T., Utkal Hydrocarbons will be allotted a minimum quantity of 12.5 M.T. and all other Units will be allotted 10 M.T. every month and the rest of the materials will be distributed on prorata basis as per the assessed capacities of the Units as on 31/08/1982 as has been given in paragraph 5.4.1 of the report. He argued that this formula recommended by the First Committee was a reasonable formula and had taken into consideration the installed capacity of the different industrial Units and was in accord with the directions of the Madhya Pradesh High Court in the judgment and order dated 11/10/1984 in Misc. Petition No.462 of 1982. He submitted that the second Committee in its report also recommended the same norms of distribution to be followed as were recommended by the First Committee, but unfortunately by the order dated 23/02/1989 in Annexure-D/7 to the writ petition the Industries Commissioner fixed the monthly quota of 75 M.T. for M/s. Raysinet Kemikal Company and the result was that in the months in

which more raw materials are available with the Bhilai Steel Plant for distribution the petitioner does not get any further material on prorata basis as per the assessed capacities of the Units as on 31/08/1982 as has been given in paragraph 5.4.1 of the report. He submitted that the impugned order dated 23/02/1989 is violative of the principles of the natural justice inasmuch as no hearing was granted to the petitioner before the said order was passed. In support of this submission Mr. Shrivastava cited the decision of the Supreme Court in **Smt. Maneka Gandhi Vs. Union of India and another** reported in **AIR 1978 SC 597** wherein it has been held that for the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function inasmuch as the aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision. He further submitted that the Industries Commissioner had no power to review the earlier distribution of raw materials made on the basis of the report of the first Committee and on this ground also the impugned order dated 23/02/1989 was liable to be quashed.

(8) Mr. Rohit Arya, Sr. Advocate, assisted by Mr. R.R. Sinha learned counsel for the petitioner in Writ Petition 2120 of 1989 M/s. Utkal Hydro Carbons similarly submitted that it would be clear from paragraphs 22 and 23 of the judgment and order dated 11/10/1984 of the High Court in Misc. Petition 462 of 1982 that the reasonable formula was to be worked out considering the installed capacity of the industrial Units and pursuant to the directions in the said judgment and order the First Committee after considering the assessed capacity of the petitioner had recommended an allotment of minimum quantity of 12.5 M.T. of raw materials to the petitioner and had also recommended that the excess materials over and above the allotment of minimum quantities to the industrial units be distributed on prorata basis as per the assessed capacities of the industrial units as on 31/08/1982. He submitted that the Third Committee also endorsed the aforesaid norms recommended by the First Committee and yet by the impugned order dated 23/02/1989 the Industries Commissioner has disregarded the recommendations of the First Committee and the Third Committee and has fixed a monthly quota of 46 M.T. of raw materials for M/s. Utkal Hydrocarbons. Mr. Arya and Mr. Sinha submitted that since the earlier allotment of raw materials on the basis of the recommendation of the

First Committee was pursuant to the directions of the Madhya Pradesh High Court in the judgment and order dated 11/10/1984 in Misc. Petition 462 of 1982, the earlier allotment could not have been reopened without the permission of the High Court. He submitted that it will also be clear from the impugned order dated 23/02/1989 that it is based on the assumption that the production of the bye products of the Bhilai Steel Plant has increased to 500 M.T. and was likely to further increase to 600 M.T. per month. But actually the production of the Bhilai Steel Plant is much lower than 500 M.T. per month and is not likely to increase to 600 M.T. per month and hence the impugned order is erroneous and is liable to be quashed. In this context, he referred to the letter dated 27/04/1989 in Annexure-A/5 of the General Marketing Manager of the Steel Authority of India Ltd. as well as the affidavit and chart of production and supply of the bye products filed on behalf of the Bhilai Steel Plant.

(9) Mr. Kishore Bhaduri learned counsel appearing for the petitioner in Writ Petition No.742 of 2002 M/s. S.S. Udyog and the petitioner in Writ Petition No.3185 of 2003 Shri Pawan Mantri, a partner of M/s. S.S. Udyog at Bhilai, submitted that the petitioner M/s. S.S. Udyog is also an Industrial Unit at Bhilai requiring Heavy Benzol (H.B.), a bye product of Bhilai Steel Plant, as its raw material and pursuant to the order passed by this Court in Writ Petition N.2637 of 2001 on 15/01/2002 to consider the representation of the petitioner, the Bhilai Steel Plant allotted raw materials and the petitioner paid an advance of Rs.38,569/- for the same to the Bhilai Steel Plant, but by a subsequent communication dated 05/04/2002 of the Bhilai Steel Plant to the petitioner in Annexure-P/2 annexed to the writ petition the advance was refunded on the ground that the Director of Industries has informed the Bhilai Steel Plant that it will not be possible to allot any raw material to the petitioner. He further submitted that just because the petitioner is a new Industry and was not one of the thirteen Industrial Units which were allotted raw materials from the Bhilai Steel Plant pursuant to the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No.462 of 1981, the petitioner cannot be denied raw materials and any such denial will be violative of the right to equality under Article 14 of the Constitution. He submitted that even if the petitioner has given any undertaking at the time of setting up the new

industry that he will not claim any raw materials such undertaking should not stand in the way of allotment of the raw materials to the petitioner.

(10) Mr. Satyawan Agrawal learned counsel appearing for the petitioner in Writ Petition No.894 of 2002 submitted that the petitioner has also set up a new small scale industry styled M/s. Kushal Chemicals and applied to the Bhilai Steel Plant to allot raw materials, but by a communication dated 14/02/2002 the Bhilai Steel Plant has refused to supply the raw materials He submitted that the aforesaid communication dated 14/02/2002 of the Bhilai Steel Plant refusing to supply raw material to the petitioner is violative to the right of the petitioner under Articles 14, 19 (1)(g) and 21 of the Constitution of India.

(11) In reply to the aforesaid contentions of the learned counsel appearing for the petitioners, Mr. V.V.S. Murthy learned Dy. Advocate General for the State of Chhattisgarh, relying on the reply filed on behalf of the respondents 1 and 2 submitted that pursuant to the directions in paragraphs 22 and 23 of the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No.462 of 1981 the First Committee was constituted which after due consideration submitted its report and on the basis of the recommendations in the said report allotments were made to the Industrial Units by the order dated 31/01/1986. Thereafter the Chhattisgarh Chemical Industries Association submitted a representation contending that the quota of the industrial units should be increased in view of the increased availability of raw materials and the Association also represented that no new unit should be registered and the existing units should not be permitted to increase their capacity. He submitted that in view of the said representations made by the Association and considering the fact that the available quantity of the raw materials at Bhilai Steel Plant had increased from approximately 300 M.T. per month to 500 M.T. per month, the Industries Commissioner constituted the Third Committee to assess the capacity of the existing units and on the basis of the report submitted by the Third Committee the Industries Commissioner passed the order dated 23/02/1989 after thoroughly examining the matter in the light of the new industrial policy of the Government of Madhya Pradesh declared in October 1988. He further submitted that the revised allotments made under the said order dated 23/02/1989 is based on the actual availability of bye products with the Bhilai Steel Plant and guarantees 34

M.T. per month to each unit because 30 M.T. per month is required for an economically viable industrial unit. He further submitted that no allotment can be made to new Industries out of the scarce raw materials produced by the Bhilai Steel Plant and affidavits have been taken from such new Industries that they will not claim any raw materials from the Bhilai Steel Plant. He argued that since there is a shortage of raw materials comprised of bye products of the Bhilai Steel Plant any allotment of raw materials to the new Industries will adversely effect the existing industrial units.

(12) Mr. Prashant Mishra, Sr. Advocate, assisted by Mr. Vivek Ranjan Tiwari learned counsel appearing for the Bhilai Steel Plant submitted that in paragraph 22 of the judgment of the Madhya Pradesh High Court dated 11/10/1984 passed in Misc. Petiton No.462 of 1981it has been made clear that the "available" raw material is to be allotted as per reasonable formula and the chart filed by the Bhilai Steel Plant along with its return in Writ Petition No.2120 of 1989 would show the production of the bye products of the Bhilai Steel Plant namely Heavy Benzol Oil (HBO), Drained Nepthelene Oil (DNO) and De-phenolised Oil (DPO) for the period from 1984-85 to April 2004/05 and from the said chart it is clear that the availability of the raw materials would be far less than 500 M.T. per month and hence it is not possible for the Bhilai Steel Plant to supply 500 M.T. every month to the industrial units as per the order dated 23/02/1989 of the Industries Commissioner, Government of Madhya Pradesh.

(13) Mr. P. Diwakar, Sr. Advocate, assisted by Mr. Sanjay K. Agrawal learned counsel appearing for respondents 15 & 16 in Writ Petition No.2403 of 1989 and for the respondents 9 & 13 in Writ Petition No.2120 of 1989 submitted that the report of the First Committee clearly stated that the minimum quantity of the raw material required for an industrial Unit for making the industrial Unit viable was 30 M.T. and yet the earlier allotment order dated 31/01/1986 the Industrial Units were not given 30 M.T. and it is for this reason that when the production of bye products of Bhilai Steel Plant increased and more quantity of raw materials became available the Chhattisgarh Chemical Industries Association approached the authorities to review the allotments and accordingly the matter was reviewed by the Third Committed and a fresh order was passed on 23/02/1989 redistributing the bye products so as to ensure a minimum of 30 M.T. to every industrial unit. He further submitted that by the said order dated 23/02/1989 M/s. Raysinet

Kemikal Company which was getting 20 M.T. by the earlier allotment order dated 31/01/1986 has been allotted 75 M.T. per month and similarly M/s. Utkal Hydrocarbons which was earlier getting 12.5 M.T. as per the allotment order dated 31/01/1986 has been allotted 46 M.T. per month and hence M/s. Raysinet Kemikal Company and M/s. Utkal Hydrocarbons have been allotted more raw materials than what they were allotted earlier and they cannot possibly have any grievance against the order dated 23/02/1989. He further submitted that M/s. Deepa Industries has an assessed installed capacity of 8.5 M.T. per month which works out to 118 M.T. per annum whereas M/s. Deepa Industries have been allotted 102 M.T. per annum by the order dated 23/02/1989 as before whereas the other industrial units are getting much less compared to their assessed installed capacities. He accordingly argued that this is not a fit case in which redistribution order dated 23/02/1989 should be interfered with by the Court.

(14) Mr. S.C. Verma learned counsel appearing for the interveners in Writ Petition No.3053 of 1992 submitted that any additional allotment in favour of M/s. Deepa Industries over and above what has been allotted by the order dated 19/07/1988 would reduce the quantities of raw materials allotted to the aforesaid interveners and therefore no direction should be given by the Court for increasing the allotment made to M/s. Deepa Industries.

(15) Considering the aforesaid contentions raised by the learned counsel for the parties, the preliminary questions which arise for decision in this batch of writ petitions is whether the Industries Commissioner had no power to review the earlier allocation of the raw materials made by the order dated 31/01/1986 pursuant to the report of the First Committee and whether for any such review the permission of the High Court was necessary in view of the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No.462 of 1981. An order for distribution of raw materials to industrial Units is purely an administrative order and an administrative authority can always review and alter an administrative order unless there is legal bar to such review. No statutory provision has been brought to our notice which prohibits review of an administrative order for distribution of the raw materials amongst industrial Units of the State. By the judgment and order dated 11/10/1984 in Misc. Petition No.462 of 1981 the Madhya Pradesh High Court directed the

Director of Industries to evolve a reasonable formula and allot the raw material available in the light of the formula to respective industries in the light of the discussions in the said judgment and order. The relevant portion of paragraph 23 of the said judgment which contains the aforesaid direction is quoted herein below:

> "It is, therefore, directed that the Director of Industries, in the light of the discussion above, will evolve a reasonable formula and allot the raw material available in the light of the formula to respective industries. It is, however, expected of the respondent No.3 to see that, if possible, the production of the raw material is increased so that the requirement of all these industries can be met as far as possible".

It will be clear from the aforesaid portion of the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No.462 of 1981 that the allotment was to be made out of "raw material available" on the basis of a reasonable formula to respective industries. The Madhya Pradesh High Court also made it clear in the aforesaid judgment and order that if possible the production of the raw material should be increased so that the requirement of all the industries could be met as far as possible. Accordingly, when it was brought to the notice of the Industries Commissioner by the Chhattisgarh Chemical Industries Association that the production of raw material in the Bhilai Steel Plant has increased and more raw materials have become available, the Industries Commissioner could review the allotment of raw material made to the different industries by the order dated 31/01/1986 and make a re-distribution of the raw material to different industrial Units. There is nothing in the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No.462 of 1981 that before review of the distribution of the raw materials to the industrial units permission of the High Court was necessary. On the other hand, it was implicit in the said judgment and order of the Madhya Pradesh High Court that as and when there was increase in the production of raw materials, the requirement of all the industries should be met as far as possible. The contentions of Mr. Rajiv Shrivastava learned counsel for the petitioner in Writ Petition No.2403 of 1989 and Mr. Rohit Arya, Sr. Adv., assisted by Mr. R.R. Sinha learned counsel for the petitioner in Writ Petition No.2120 of 1989 that the Industries Commissioner had no power to

review the earlier allocations of raw material made by the order dated 31/01/1986 and re-distribute the raw materials is therefore without merit.

(16) The next question which arises for decision in this batch of the writ petitions is whether in fact there has been an increase in the production of raw material by the Bhilai Steel Plant calling for re-distribution of the raw material. It is stated in the order dated 23/02/1989 of the Industries Commissioner that as per earlier capacity assessment report, the production of bye products in the Bhilai Steel Plant was 390 M.T. per month, but at present the production has gone up to 500 M.T. and it is likely to go up to 600 M.T. per month in a year. But a chart of yearly production of bye products namely HBO, DNO and DPO from 1984-85 to April-September 2004 has been furnished along with the affidavit of Shri S.S. Parida, Deputy Manager (Marketing and Strategic Planning), Bhilai Steel Plant. The figures of yearly production in the said chart and the figures of monthly production calculated by dividing the yearly production by 12 are extracted herein below: -

Year	Yearly production	Monthly production.
1984-85	3440	286.66
1985-86	3831	319.25
1986-87	3012	251.00
1987-88	3370	280.83
1988-89	5522	460.16
1989-90	2660	221.66
1990-91	5894	491.16
1991-92	6146	512.16
1992-93	5620	468.33
1993-94	4635	386.25
1994-95	4884	407.00
1995-96	5611	467.58
1996-97	5184	432.00
1997-98	5506	458.83
1998-99	4845	403.75
1999-2000	5306	442.16
2000-2001	5352	446.00
2001-2002	4843	403.58
2002-2003	4111	342.58
2003-2004	4008	334.00
April'04-sep'04	1536	256.00

It would be clear from the aforesaid figures that in the year 1985-86 there was production of an average of 319 M.T. of bye products per month in the Bhilai Steel Plant and the said production decreased in the year 1986-87

and in the year 1987-88 but increased in the year 1988-89 to approximately 460 M.T. But in the year 1989-90 the production again went down and thereafter increased in the years 1990-91 and 1991-92 to 491and 512 M.T. approximately per month, but the said production has again gone down for the subsequent years. Hence, the assumption in the order dated 23/02/1989 of the Industries Commissioner that the availability of the raw material has increased to 500 M.T. and was likely to increase to 600 M.T. per month, is factually incorrect. Although there have been some increases in some years, such increases have not been consistent. The order dated 23/02/1989 of the Industries Commissioner which is based on an erroneous assumption that the availability of raw material has increased to 500 M.T. and may likely to increase up to 600 M.T. is therefore liable to be quashed.

(17) But the fact remains that there have been some increases in the production of raw material in the Bhilai Steel Plant since the order dated 31/01/1986 was issued allotting the raw materials to the different industrial units. We have already found in the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court passed in Misc. Petition No.462 of 1981 that if there is increase in the production of raw materials, the requirements of all the industries can be met. In the aforesaid judgment and order also the Madhya Pradesh High Court has stated that the reasonable formula for allotment of raw materials to the industrial units has to be worked out in the light of the discussions and observations made in the judgment. The discussions and observations as contained in paragraph 22 of the said judgment are quoted as under:

> "In this view of the matter, therefore, the real question which deserves to be considered in this petition is about evolving a reasonable formula for supply of the raw material to the petitioner as well as other industries in the field. It is, however, unfortunate that before granting permission for starting new industries in the field it was not kept in view that the raw material may not be sufficient for all the industries to run properly and economically. If this has been kept in view, probably there may not have been contesting industries claiming raw material sufficient to run the industries. In this view of the matter, therefore, the principles which must be kept in view have to be enunciated. It is, however, plain that

it is not possible for this Court to fix a reasonable formula for distribution but it cannot also be quoted that some principles could be evolved which if applied in evolving a formula will evolve a rational, reasonable and equitable formula for distribution of raw material to all the industries concerned. In this aspect of the matter, therefore, what appears essential to be considered is the installed capacity of an industry to utilize the raw materials every year. As it is well known that all industries could not get all the raw materials, which would be necessary to meet the installed capacity, something less than what is necessary is to be distributed and in other to arrive at a reasonable formula, the interests of the workers and also the economic condition of the industry will have to be assessed. In this view of the mater, therefore, it will also further have to be assessed as to what is the minimum requirement of a particular industry to make it run economically and in this regard consideration may also have to be done about the financial resources, labour potential and management potential available with each industry. In this view of the matter, therefore, it would be proper that the Director of Industries may appoint a committee of experts to go into these questions to first find out the installed capacity of each industry, the number of workers employed in each industry and the necessary requirement of raw material (quantity) for each industry to run it as a economic unit and after ascertaining the figures on this basis for each industry may distribute the raw material proportionately to all the industries concerned and in this view of the matter, therefore, the lifting either best or lowest may not be very relevant but the relevant fact may be that the raw material allotted to each industry must be utilized for production and may not be wasted or spent in any other manner. This can always be safeguarded by the Director of Industries in an appropriate manner".

A reading of the aforesaid discussions and observations in paragraph 22 of the aforesaid judgment and order would show that the following factors have to be kept in view for working out the reasonable formula for supply of raw material to the industrial Units: (i) new industries in the field were not to be encouraged as raw material may not be sufficient to all the industries to run

properly and economically, (ii) the installed capacity of the industries to utilize the raw materials must be taken into consideration, (iii) the minimum requirement of a particular industry to make it run economically has to be assessed and considered; (iv) the financial resources, labour potential and management potential available with each industry is also to be considered (v) the raw material allotted to the industries must be utilized for production and is not wasted or spent in any other manner, (vi) after ascertaining the requirements of each industry to run it as an economic unit, the raw material may be distributed proportionately to all the industries concerned. The aforesaid relevant factors mentioned in the judgment and order dated 11/10/1984 will have to be kept in view by the authorities while redistributing the raw materials to the industrial units because of increase in the production of the raw materials.

(18) The next question for decision is whether the petitioners in Writ Petition Nos.742 of 2002, 3185 of 2003 and 894 of 2002 which have set up entirely new industries and which have not been allotted any raw material pursuant to the judgment and orders passed by the Madhya Pradesh High Court in Misc. Petition No.462 of 1981 are entitled to any allotment of raw materials. For deciding this question while reserving the cases for judgment, by order dated 29/04/2005 we called upon the industries which were parties to the writ petitions, to file affidavits clearly stating as to whether they have been getting raw materials from any source other than Bhilai Steel Plant for their industries from 1986 to 2004 and the parties have filed their affidavits from which it appears that the only source of raw material for the industries is the Bhilai Steel Plant.

(19) The Madhya Pradesh High Court in the judgment and order dated 11/10/1984 has observed that it was unfortunate that before granting permission for starting new industries in the field it was not kept in view that the raw material may not be sufficient for all the industries to run properly and economically and if this had been kept in view, probably there may not have been contesting industries claiming raw material sufficient to run the industries. Until therefore the availability of raw material increases to such an extent that the requirements of the existing industries in the State of Chhattisgarh are met, any allotment of raw material to the new industries will reduce the allotment of raw material to the existing industries and some of the industrial units may cease to be economically viable and may

ultimately close down. It is for this reason that before granting permission to the new industries set up in the field, declarations have been taken from such new industrial units that they will not claim any raw material. Under Article 19(1)(g) of the Constitution of India the petitioners have been guaranteed the right to carry on any trade or business but such right does not include the right to supply of scarce raw material for the industries by the State. The right of the petitioners under Article 21 to personal liberty and life also are not affected by refusal on the part of the authorities to allot scarce raw materials to the petitioners setting up new industries. The petitioners have a right to equality under Article 14 of the Constitution of India but as has been held by the Supreme Court in **Om Prakash and others Vs. State of J&K and others** (supra) Article 14 of the Constitution of India permits reasonable classification and a classification is reasonable when it is not an arbitrary selection but rests on differences pertinent to the subject in respect of which the classification is made. In the said judgment the Supreme Court particularly observed as under:

> "We are not unaware that the rule of equality does not mean mathematical equality and that it permits of practical inequalities. But what is needed is that the selection of the quota seekers as in the case in hand should have a rational relation to the object sought to be achieved in the industrial policy decision of the State. If the selection or differentiation is arbitrary and lacks a rational basis it offends Article 14".

Hence, existing industries and new industries can be separately classified in two groups for the purpose of allotment of scarce raw materials from the Bhilai Steel Plant and existing industries can be allotted raw materials first to ensure that they run in an economically viable manner and do not ultimately close down for non availability of minimum quantities of raw materials and the new industries could be allotted raw materials only after the minimum requirements of the existing industrial units are met. Such a classification in our considered opinion will not be arbitrary but rational having a rational nexus with the object sought to be achieved by the industrial policy of the State namely growth of industries in the State. Certainly the object of the industrial policy is not to kill the existing industries by promoting new industries at the cost of the existing industries. We are thus of the opinion that it is only after the requirement of minimum quantities of raw materials of

the existing industries are met that the new industries can be considered for any allotment of raw materials.

(20) The last question which arises for decision in this batch of writ petitions is whether the petitioner is entitled to any opportunity of hearing before any redistribution due to increase in the production and availability of raw materials after the earlier order of distribution dated 31/01/1986. In **Maneka Gandhi Vs. Union of India and another** reported in **AIR 1978 SC 597** the Supreme Court has clearly held that the test to find out as to whether the doctrine of natural justice would apply is not whether the deciding authority was exercising quasi-judicial function or administrative function but whether fair play in action or inquiry requires that principles of natural justice should be followed. P.N. Bhagwati (J) delivering the majority judgment in the said case of **Maneka Gandhi Vs. Union of India** held:

> "Can it be said that the requirement of 'fair play in action' is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences."

In the present case, thirteen industrial Units were allotted raw materials by the order dated 31/01/1986 and one more industry was allotted raw material by the order dated 19/07/1988. In the allotment orders the minimum quantities of raw materials were allotted to fourteen industries and beyond the minimum quantities, the balance raw materials were to be distributed prorata as per their assessed capacities every month. If this formula for distribution was to be disturbed on the ground that the production and availability of raw material has in the meanwhile increased, fair play in action requires that they were heard by the authority who was to pass the order of re-distribution. In fact, the earlier order of allotment dated 31/01/1986 was passed on the report of the First Committee and the First Committee had heard the representatives of the thirteen industrial Units. Hence, the representatives of the industrial units which have been allotted raw materials by the earlier allotment orders should be heard before the allotments made by the earlier orders are disturbed by a fresh order of re-

distribution on account of the increase in the production and availability of raw materials.

(21) For the aforesaid reasons, the order dated 23/02/1989 passed by the Industries Commissioner re-distributing the raw materials namely the bye products of the Bhilai Steel Plant, to the different industries is quashed and the Industries Commissioner is directed to take into account the actual increase in the raw materials and re-distribute the same in accordance with a reasonable formula worked out keeping in mind the observations in the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No.462 of 1981 and in this judgment after affording an opportunity of hearing to the representatives of the industrial units which require the bye products of Bhilai Steel Plant as their raw materials. These directions will be complied with within a period of three months from today.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

Brajesh*